



January 29, 2020

Council Meeting of February 4, 2020
Subject: Assignment and Assumption Agreement

The Honorable Mayor
and
Members of the City Council

Ladies and Gentlemen:

In 2000, Muskegon County sold bonds on behalf of the City and Fruitport Township to complete regional water improvements. In May of this year the bonds will be paid off.

With the retirement of these bonds, the County desires to release their interest in the infrastructure to the City and Fruitport Township. The infrastructure is part of the West Michigan Regional Water Authority (WMRWA) system. It is recommended that the City and Fruitport Township assign their interest in the regional system to the WMRWA. Assigning their interest over to the WMRWA would also include the cell antenna lease payments on the Airline Road water tower.

Council is requested to consider approving entering into the prepared Assignment and Assumption Agreement and authorizing the Mayor to sign the agreement and resolution in Exhibit D on behalf of the City.

Respectfully submitted,

Mark C. Meyers AC

Mark C. Meyers
City Administrator

GAB/sr
Attachment

Administration/City Clerk (231) 798-4391	Assessing Division (231) 799-6806	Building Division (231) 799-6801	Finance/Treasurer (231) 799-6805	Fire Prevention (231) 799-6809	Fire Department (231) 798-2255
Parks/Recreation (231) 799-6802	Planning/Zoning (231) 799-6800	Police Department (231) 733-2691	Public Works (231) 799-6803	Streets Division (231) 798-2156	Water/Sewer (231) 799-6804

RESOLUTION

WHEREAS, an Assignment and Assumption agreement has been prepared to release interest in the regional system to the WMRWA, and

NOW, THEREFORE, BE IT RESOLVED that the Mayor is authorized to sign the agreement and resolution in Exhibit D on behalf of the City.

At a regular meeting of the City Council of the City of Norton Shores, held at the Norton Shores Branch Library, 705 Seminole Road, on the 4th day of February, 2020, the foregoing resolution was moved for adoption by Council Member. The motion was supported by Council Member.

Ayes:

Nays:

Abstain:

Resolution declared adopted/denied.

Shelly Stibitz, City Clerk



Internal Memo

January 28, 2020

TO: Mark C. Meyers, City Administrator
FROM: Gerald Bartoszek, Public Works Director **GAB**
RE: Bond Payoff

In 2000 the County sold bonds on behalf of Norton Shores and Fruitport Township to complete regional water improvements. This bonding was completed through the County to secure a better interest rate. As a result, the County, as the bond holder, technically holds an interest in the bonded infrastructure.

In May of this year the bonds will be paid off. With the retirement of these bonds, it is the desire of the County to release their interest in the infrastructure to Norton Shores and Fruitport Township. The infrastructure in question is part of the West Michigan Regional Water Authority (WMRWA) system; therefore, it is recommended that Norton Shores and Fruitport Township, in turn, assign their interest in the regional system components to the WMRWA. This assignment would include the lease payments for the cell antennas on the Airline Road water tower.

The attorney for the WMRWA prepared an Assignment and Assumption Agreement to accomplish the transfer of ownership. The Council is being requested to approve the prepared resolution authorizing entering into the agreement. Once all parties agree by adopting similar resolutions and the bonds are retired in May, the agreement execution would be finalized. At this time, it is the desire of all parties to have their governing bodies consider this agreement in February.

I would like to place this item on the February 4 City Council agenda for their consideration.

Please contact me if you have any questions or concerns.

GAB

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the “Agreement”) is entered into effective as of _____, 2020 (the “Effective Date”) by and between the **City of Norton Shores**, a Michigan municipal corporation with its principal offices at 4814 Henry Street, Norton Shores, Michigan 49441 (the “City”), **Fruitport Charter Township**, a Michigan charter township with its principal offices at 5865 Airline Road, Fruitport, Michigan 49415 (the “Township”), and the **County of Muskegon**, a Michigan county with its principal offices at 990 Terrace Street, Muskegon, Michigan 49442 (the “County”) (together, the City, the Township, and the County are referred to throughout this Agreement as the “Assignors”), and the **West Michigan Regional Water Authority**, a Michigan statutorily authorized metropolitan area council with its principal offices at 4814 Henry Street, Norton Shores, Michigan 49441 (the “Authority,” and also referred to throughout this Agreement as the “Assignee”). Additionally, each of the Assignors and the Assignee are also referred to throughout this Agreement individually as a “Party” and collectively as the “Parties.”

Background

A. In January 2014, the City and the Township incorporated the Authority in accordance with the Michigan Metropolitan Councils Act (Act 292 of 1989) for the purpose of financing, issuing bonds for, improving, constructing, and contracting for water and sewer public improvements and services.

B. Before the City and the Township formed the Authority, in 2010, they participated in bond financing to cover the costs of various project components and construction related to their joint water supply system (referred to as the “Water Supply Infrastructure”), which bonds are set to be repaid in full as of May 1, 2020 (referred to as the “Bond Financing”).

C. The City and the Township issued the bonds in 2010 through the County per Act 185 of 1957, as amended, and therefore the County assumed an ownership interest in the Water Supply Infrastructure as long as the bonds remain outstanding.

D. As an additional revenue stream, the City and the Township, entered into three separate cellular telephone antenna lease agreements, each titled “Site Lease Agreement Regarding the Use of the Fruitport Water Tank” (referred to collectively as the “Lease Agreements”). The County participated in these Lease Agreements by virtue of the Bond Financing. Thus, each of the Lease Agreements was entered into among the City, the Township, the County, and the following three cellular telephone service providers on the following dates: (i) New Cingular Wireless PCS, LLC, a Delaware limited liability company, on August 24, 2005 (attached as *Exhibit A*); (ii) iPCS Wireless, Inc., a Delaware corporation, on August 30, 2008 (attached as *Exhibit B*); and (iii) MetroPCS Michigan, Inc., a Delaware corporation, on May 14, 2009 (attached as *Exhibit C*).

E. Following the retirement of the Bond Financing, the City, the Township, and the County, as the “Assignors,” have agreed to transfer, convey, and assign all of their rights, title, interests, and obligations in, to, and under the Water Supply Infrastructure and the Lease

Agreements to the Authority, and the Authority has agreed to accept such assignment and assume all of the rights and obligations of the Assignors. The Assignors do not assign the Bond Financing to the Authority, because the Assignors shall perform all obligations under the Bond Financing.

F. The Parties now wish to memorialize the terms and conditions of the Assignors' transfer and assignment, and the Assignee's acceptance and assumption, of such interests as set forth below in this Agreement.

Agreement

1. Incorporation of Recitals and Effective Date. The above recitals are made a part of this Agreement. The Effective Date shall be immediately after all of the Parties have approved and executed this Agreement, and the Bond Financing has been completed by the payment in full of the bonds.

2. Incorporation of Exhibits. The following exhibits are made a part of this Assignment: (i) *Exhibit A, B, and C* – copies of each of the Lease Agreements; (ii) *Exhibit D* – the City's duly authorized resolutions to make the assignment referenced in this Agreement to the Authority; (iii) *Exhibit E* – the Township's duly authorized resolutions to make the assignment referenced in this Agreement to the Authority; (iv) *Exhibit F* – the County's duly authorized resolutions to make the assignment referenced in this Agreement to the Authority; and (v) *Exhibit G* – the Authority's duly authorized resolutions to accept the assignment referenced in this Agreement from the City, the Township, and the County.

3. Assignment. As of the Effective Date, the Assignors transfer and assign to the Assignee all of the Assignors' rights, title, interests, and obligations in, to, and under the Water Supply Infrastructure and the Lease Agreements. Additionally, for purposes of clarification, it is the intent of the Parties that the rights, title, and interests of the Assignors to all account balances related to funds received under the Lease Agreements are also being transferred and assigned to Assignee as of the Effective Date. The Assignors do not assign the Bond Financing to the Assignee, but rather are obligated to perform all obligations to retire the Bond Financing.

4. Acceptance and Assumption. As of the Effective Date, the Assignee accepts the transfer and assignment made by the Assignors, and agrees: (i) to assume all obligations and responsibility of the Assignors for the Water Supply Infrastructure, as may be required by applicable law and governed by any contracts separate from this Agreement; and (ii) to assume all obligations of the Assignors as to the performance of all of the terms, covenants, and conditions of the Lease Agreements. The Assignee assumes no compliance obligations of the Assignors with respect to any remaining requirements or liabilities related to the Bond Financing; rather, the Assignors are obligated to perform all duties to terminate the Bond Financing.

5. Further Assurances and Cooperation. The Parties agree to execute and deliver such further instruments as any of the Assignors or the Assignee may reasonably require from time to time to effectuate the transfer and assignment accomplished by this Agreement; provided, however, that if a Party requests another Party to execute and deliver any further instrument(s),

then the Party to whom the request is made will have the right to reasonably approve the form and substance of such instrument(s) before being required to sign the same.

6. Indemnifications.

(a) *The Assignors.* Each of the Assignors agrees to indemnify and hold the Assignee harmless from and against all liabilities, costs, or damages arising under the Water Supply Infrastructure, the Lease Agreements, and the Bond Financing by reason of the failure of any of the Assignors, *before the Effective Date*, to fully comply with any and all of its duties, covenants, and obligations, as applicable, as to the Water Supply Infrastructure, the Lease Agreements, and the Bond Financing. For purposes of clarification, the Assignors are not agreeing to be jointly and severally liable for each other's liabilities, costs, or damages arising under the Water Supply Infrastructure, the Lease Agreements, and the Bond Financing, as each of the Assignors was subject to different duties, covenants, and obligations prior to the Effective Date.

(b) *The Assignee.* The Assignee agrees to indemnify and hold each of the Assignors harmless from and against any liabilities, costs, or damages arising under the Water Supply Infrastructure and the Lease Agreements by reason of the Assignee's failure, *after the Effective Date*, to fully comply with any and all of its duties, covenants, and obligations as to the Water Supply Infrastructure and the Lease Agreements. The Assignee accepts no responsibility or obligations with regard to the Bond Financing.

7. The Assignors' Representations and Warranties. Each of the Assignors separately represents and warrants for itself (and itself only) to the Assignee as follows:

(a) The Assignor has taken all necessary action to duly approve and authorize this Agreement, and the Assignor has the right to make the transfer and assignment provided in this Agreement.

(b) There are no claims pending or threatened before any tribunal or administrative or regulatory authority that would materially impair the Assignor's right to make the transfer and assignment provided in this Agreement.

(c) Any and all material liabilities of any nature, whether accrued, absolute, contingent or otherwise, relating to the Water Supply Infrastructure, the Lease Agreements, and the Bond Financing, have been previously disclosed to the Assignee and are referenced on the attachment to this Agreement at *Exhibit H*.

8. The Assignee's Representations and Warranties. The Assignee represents and warrants as follows:

(a) The Assignee has taken all necessary action to duly approve and authorize this Agreement, and the Assignee has the right to accept the transfer and assignment provided in this Agreement.

(b) There are no claims pending or threatened before any tribunal or administrative or regulatory authority, except those that have been previously disclosed separate from this Agreement to the Assignors, that would materially impair the Assignee's right to accept the transfer and assignment provided in this Agreement.

9. Notices. All notices or other communications to be given under this Agreement shall be deemed as sent when dispatched by regular, registered, or certified mail, postage prepaid, or by hand delivery addressed or delivered to the address as follows:

If to the City:
Attn: City Administrator
4814 Henry Street
Norton Shores, Michigan 49441

If to the Township:
Attn: Township Supervisor
5865 Airline Road
Fruitport, Michigan 49415

If to the County:
Attn: Administrator
990 Terrace Street
Muskegon, Michigan 49442

If to the Authority:
Attn: Chairperson
4814 Henry Street
Norton Shores, Michigan 49441

The Parties may, by notice given under this Agreement, designate any further or different address to which subsequent notices or other communications may be sent.

10. Assignment. This Agreement is not assignable by any Party, and each Party acknowledges and agrees that such Party will not assign or transfer its rights under the Agreement without the prior written consent from each of the other Parties.

11. Legally Binding. All of the covenants, terms, and conditions contained in this Agreement will be binding upon and inure to the benefit of the Parties' successors, assigns, and legal representatives.

12. No Third Parties. Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties and their respective successors or permitted assigns, any rights or remedies whatsoever.

13. Construction. The Parties acknowledge and agree that each of them participated equally in the drafting of this Assignment. Any rule to the effect that the Assignment is to be construed more strictly against one Party than another is not applicable.

14. Governing Law. This Agreement will be construed in all respects in accordance with the laws of the State of Michigan.

15. Captions and Headings. The captions or headings of this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.

16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and there are no other representations, warranties, promises, guarantees, or agreements, oral or written, expressed or implied, between the Parties with respect to this Agreement.

17. Amendments. This Agreement may not be amended, changed, modified, or altered without the express written consent of each Party.

18. Severability. In the event any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

19. Waiver. No waiver of any of the provisions of this Agreement will be deemed or constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the Party giving the waiver.

20. Counterparts. This Agreement may be simultaneously executed in counterparts, each of which will be an original and all of which will constitute one and the same instrument.

[Signatures on following page]

Signature Page

**Assignment and Assumption Agreement among
the City of Norton Shores, Fruitport Charter Township, the County of Muskegon, and the
West Michigan Regional Water Authority**

Each of the Parties have authorized the signing of this Agreement by their respective duly authorized officers all effective as of the Effective Date.

THE CITY

City of Norton Shores

By:
Its:

Date Signed: _____

THE TOWNSHIP

Fruitport Charter Township

By:
Its:

Date Signed: _____

THE COUNTY

County of Muskegon

By:
Its:

Date Signed: _____

THE AUTHORITY

West Michigan Regional Water Authority

By:
Its:

Date Signed: _____

EXHIBIT A

Copy of the Lease Agreement for New Cingular Wireless PCS, LLC

Atest

**SITE LEASE AGREEMENT
REGARDING THE USE OF THE
FRUITPORT WATER TANK**

- A. **Owners** – The Owners, for the purpose of this Lease, will be Township of Fruitport, City of Norton Shores and County of Muskegon. Owner’s representative for all contact and access shall be Mr. Bob Alder, Fruitport Public Works Director. Mr. Alder may be contacted at (231) 865-3151 or faxed at (231) 865-3118.

- B. **Lessee** – The Lessee shall be New Cingular Wireless PCS, LLC, A Delaware limited liability company, having a mailing address of 6100 Atlantic Boulevard, Norcross, GA 30071. The Lessee’s designated representative shall be Nick Dooley who can be contacted at (248) 613-0017 or faxed at (248) 356-4151. The designated representative shall be the person authorized to request access to the Site and be the person contacted for communication purposes.

- C. **Communication** – Communication between the Owners and NEW CINGULAR WIRELESS shall be performed through their respective representatives listed above. This will prevent unauthorized entrance to the Site and will minimize the chances for miscommunication between the parties.
 - 1. **Leased Site** – NEW CINGULAR WIRELESS will be allowed a 200 square foot area (10 feet x 20 feet) outside of the tower base but close to it for the purpose of locating electrical cabinet and equipment including electrical service and telephone service.

 - 2. **Term** – The initial term (“**Initial Term**”) of this Lease shall be for a period of five (5) years commencing on the date the Lease is executed on behalf of NEW CINGULAR WIRELESS (the “**Commencement Date**”).

 - 3. **Rental** – initial rent for use of the Site shall be \$500/month per antenna as per print submitted for the first year with a 3% increase per year for the remaining period of the Lease. Rent payment for each month shall be due on the fifth day of that month. Rental payments shall commence beginning with the month that the Antenna Facility is put into service. Rent payment for the first month shall be prorated for the amount of days the Antenna Facility is in service, and payment for the first month is due no later than one week after the Antenna Facility is placed into service. Rental payments received after the fifth of the month shall be assessed a 10% penalty. Rental payments shall be sent to:

Muskegon County Department of Public Works
131 E. Apple Avenue, 4th floor
Muskegon, MI 49442

Rental payments shall be deposited in the Fruitport-Norton Shores regional Water Fund with Muskegon County.

The Muskegon County Department of Public Works should be contacted at the above address by the Lessee with any rental payment questions or concerns.

For any rental payment questions or concerns such as late payments Muskegon County Department of Public Works should contact:

New Cingular Wireless PCS, LLC at
Attn: Wireless Asset Management
Re: Cell Site #GRANMI4663; Cell Site Name: Fruitport WT
P. O. Box 2088
Rancho Cordova, CA 95741-2088

4. **Renewal Option** – the term of this lease may be extended by NEW CINGULAR WIRELESS for three additional five year periods provided that NEW CINGULAR WIRELESS gives the Owner notice of its intention to extend the term of this lease at least ninety days prior to the expiration of the current term. Owner has the option of renegotiating terms of the lease for each extension beyond the original lease period. Lease period shall be extended only with Owner approval. Owner approval shall not be unreasonably withheld such that NEW CINGULAR WIRELESS' service would be disrupted. Monetary compensation for use of the facilities shall remain as stated in paragraph #3 of this lease unless one of the following occur:
 - A. Number of antennae or appurtenances on tower has increased during previous lease period or type of antennae or appurtenances has changed.
 - B. Rate of inflation during the final two years of the previous lease period has averaged an increase equal to or greater than 3 percent.
5. **Possession** – NEW CINGULAR WIRELESS shall be allowed use of the Site beginning on the Commencement Date.
6. **Use of Premises** –
 - A. NEW CINGULAR WIRELESS may use the property for the installation, operation and maintenance of its Antenna Facilities for the transmission, reception and operation of a communications system and uses incidental thereto in accordance with the terms of this lease, and for the storage of related equipment provided that such equipment be contained within the ground area provided for in section 1 of this agreement. The Owner may permit others to use portions of the water tower. NEW CINGULAR WIRELESS' installation of all such antenna facilities shall be done according to the plans and specifications

approved by the Owner. Plans and specifications for any installation or maintenance of a structural nature shall be reviewed by the Owner's engineer. Owner's engineer shall be selected by the Owner and paid for by NEW CINGULAR WIRELESS for work associated with the review of plans and inspection of work performed on the NEW CINGULAR WIRELESS system. NEW CINGULAR WIRELESS shall be strictly liable for any contamination caused to the water in the tower or damage done to the water tower and/or the site during installation and/or during operations by NEW CINGULAR WIRELESS or any of its contractors or suppliers. Any contamination caused to the water in the tower or in the system by NEW CINGULAR WIRELESS or any of its subcontractors or employees shall be remedied by the Owner at the sole cost of NEW CINGULAR WIRELESS. Any event which may be the cause of a contamination problem shall be reported to the Owner immediately upon its occurrence. Any damage caused to the tank or the site during installation or operations of the Antenna Facility shall be repaired or replaced at the Owner's discretion and at the expense of NEW CINGULAR WIRELESS to the Owner's sole satisfaction.

- B. NEW CINGULAR WIRELESS shall, at its expense, comply with all present and future federal, state and local laws, ordinances, rules and regulations (including, but not limited to, laws relating to health, radio frequency emissions, other radiation, safety, OSHA and MIOSHA), where applicable, in connection with the use, operation, construction, maintenance and/or installation of the Antenna Facilities and/or premises. Owner agrees to reasonably cooperate with NEW CINGULAR WIRELESS in obtaining any federal licenses and permits required for or substantially required by NEW CINGULAR WIRELESS' use of the premises and all costs incurred by the Owner to aid NEW CINGULAR WIRELESS shall be reimbursed by NEW CINGULAR WIRELESS to the Owner, including postage, shipping, labor, costs of reproduction or any other costs which can be attributed to the securing of the permits.
- C. Upon termination of this lease, if requested by the Owner to do so, NEW CINGULAR WIRELESS shall remove the Antenna Facilities and all supporting structures and related hardware and equipment which are not shared or used by another user of the water tower. Such removal shall be in a workmanlike and careful manner and without interference or damage to the water tower, the water in the tower or system, or any other equipment, structures or operations on the site, including use of the site by the Owner or any of the Owner's assignees or lessees. Removal shall be completed within 30 calendar days of the day NEW CINGULAR WIRELESS receives the notification to remove the antenna facilities. Owner's engineer shall observe all removal and shall inspect for damage, the Owner's site, water tower and all other facilities associated with

NEW CINGULAR WIRELESS' use of the water tank. Engineer shall make a report to the Owner of any damage and recommended repairs. Repairs shall be made by the Owner or a contractor hired by the Owner, and all costs of repairs and the costs of the engineer shall be paid for by NEW CINGULAR WIRELESS.

D. The Owner reserves the right to install additional bracketing material or similar structural supports to allow for the co-location of other lessees' antenna or similar radiating or broadcasting equipment. The Owner agrees that, should the Owner desire to allow co-location on its water tower, reasonable and necessary assurances will be made to NEW CINGULAR WIRELESS that such co-location will not cause harm to NEW CINGULAR WIRELESS' antenna or radiating equipment.

E. Permission shall be secured from the Owner any time that NEW CINGULAR WIRELESS personnel or personnel of any contractor or supplier employed by NEW CINGULAR WIRELESS desires to enter the tank structure. NEW CINGULAR WIRELESS may place their own padlock in tandem with Fruitport Township's lock on the gates to the site, thereby allowing NEW CINGULAR WIRELESS or its designated personnel 24 hour per day/7 day per week access to the site. Should emergency access to the tower structure be required, the following contact persons/numbers shall be used:

- | | | | |
|----|---------------|----------------|-------|
| 1. | Bob Alder | (231) 865-3158 | work |
| | | (231) 773-0307 | home |
| | | (231) 397-1716 | pager |
| 2. | Dale Hilliard | (231) 865-3158 | work |
| | | (231) 788-2396 | home |
| | | (231) 351-0694 | pager |

7. **Antenna Replacement** – NEW CINGULAR WIRELESS may update or replace the Antenna Facilities from time to time with the prior written approval of the Owner, provided that the replacement facilities are not greater in number or size than the existing facilities and that any change in their location on the tower is satisfactory to the Owner. Owner shall have a period of 90 days to grant approval, during which time, Owner may employ an engineer to review plans and specifications for NEW CINGULAR WIRELESS' proposed modifications. Engineer shall also inspect tank and site prior to installation of modifications, perform inspection of the installation of the modifications and perform an inspection after installation of the modifications and submit a report to the Owner. Engineer services shall be secured by the Owner and paid for by NEW CINGULAR WIRELESS.

8. **Maintenance** –

- A. NEW CINGULAR WIRELESS shall, at its own expense, maintain any antenna facilities on or attached to the premises in a safe condition, in good repair and in a manner suitable to the Owner so as not to conflict with the use of, or other leasing of the tower by the Owner. In carrying out its maintenance responsibilities, NEW CINGULAR WIRELESS shall not in any way interfere with the use or operations of the water tower, the premises, related facilities and/or any other property or equipment owned by other tenants or the Owner.
 - B. NEW CINGULAR WIRELESS shall have sole responsibility for the maintenance, repair and security of its equipment, personal property, Antenna Facilities and leasehold improvements and shall keep the same in good repair and condition for the life of this Lease.
 - C. NEW CINGULAR WIRELESS shall keep the premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference.
9. **Utilities** – Owner agrees to cooperate with NEW CINGULAR WIRELESS in NEW CINGULAR WIRELESS' efforts to obtain electric and other utilities from any location provided by the servicing utility. NEW CINGULAR WIRELESS shall contract directly with the necessary utility companies to provide service to NEW CINGULAR WIRELESS' facilities. Accounts shall be in the name of NEW CINGULAR WIRELESS and shall in no way involve the Owner. All charges for monthly service, installation or de-installation costs shall be the sole responsibility of NEW CINGULAR WIRELESS and shall be billed directly to NEW CINGULAR WIRELESS by the utility. Owner shall provide an acceptable easement for utilities to run their lines from the property line to NEW CINGULAR WIRELESS' facilities.
10. **Taxes** – NEW CINGULAR WIRELESS shall be responsible for paying all personal property taxes assessed directly upon and arising solely from its own use of the Antenna Facilities on the site during the term of this lease.
11. **Use of Technicians/Inspectors** – Notwithstanding anything contained herein to the contrary, in order to protect the health, welfare and safety of its residents, the Owner shall have the right to have a technician and/or inspector witness all work done at the site by NEW CINGULAR WIRELESS or its contractors. Accordingly, NEW CINGULAR WIRELESS shall give the Owner advanced notice of all non-emergency work to be performed on the site. For emergency work, NEW CINGULAR WIRELESS shall give the Owner as much advanced notice as reasonably practicable. In any case NEW CINGULAR WIRELESS shall obtain keys to the facility from the Owner each time access is required and shall promptly return keys to the Owner upon completion of the work.
12. **Interference** – NEW CINGULAR WIRELESS' installation, operation and maintenance of its transmission facilities shall not damage or interfere in any way

with the Owner's water tower operations including repairs or maintenance to the water tower or with the activities of any other tenants of the water tower. Owner, at all times during the life of this lease, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the premises in connection with the water tower operations as may be necessary, including leasing parts of the water tower and surrounding ground space to others.

If the Owner receives a request for co-location on the water tower from any third-party, it shall submit a proposal complete with all technical specifications reasonably requested by NEW CINGULAR WIRELESS to NEW CINGULAR WIRELESS for review for non-interference; however, Owner shall not be required to provide NEW CINGULAR WIRELESS with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for preparing technical specifications for its proposed transmission facility. NEW CINGULAR WIRELESS shall have thirty (30) calendar days following receipt of said proposal to make any objections thereto, and failure to make any objection within said thirty (30) day period shall be deemed consent by NEW CINGULAR WIRELESS to the installation of antennae or transmission facilities pursuant to said proposal. If NEW CINGULAR WIRELESS gives notice of objection due to interference during such thirty(30) day period and NEW CINGULAR WIRELESS' objections are verified by the Owner to be valid, then the Owner shall not proceed with the proposal. NEW CINGULAR WIRELESS shall furnish the Owner with all required technical specifications reasonably requested in order that Owner may be able to verify any objection raised by NEW CINGULAR WIRELESS. Failure or refusal on the part of NEW CINGULAR WIRELESS to provide the required technical specifications within a reasonable time as set forth at the time of Owner's request, shall render NEW CINGULAR WIRELESS' objection void and Owner may proceed with third party leasing.

13. **Insurance** – NEW CINGULAR WIRELESS shall maintain, at its sole expense during the Term of this Lease commercial general liability insurance insuring NEW CINGULAR WIRELESS against liability for personal injury, death or damage to personal property arising out of the use of the site by NEW CINGULAR WIRELESS. Such insurances shall be in the amount not less than \$1,000,000.00 (\$1 million) per occurrence for each personal injury, death and property damage. NEW CINGULAR WIRELESS shall carry an excess umbrella liability policy in the amount not less than \$2,000,000.00 (\$2 million), which shall not exclude the payment of all costs incurred to remedy a contamination event to the public water system caused by NEW CINGULAR WIRELESS or any of its contractors or suppliers per occurrence. NEW CINGULAR WIRELESS shall carry all proper insurances, and in amounts as prescribed by law, on its employees and contractors including, but not limited to, unemployment and workers compensation insurance. NEW CINGULAR WIRELESS shall provide the Owner with valid certificates of all required insurances and in the required amounts, prior to being allowed to enter the site. Insurance carrier's certificate shall show evidence that it has insured NEW CINGULAR WIRELESS for all liabilities under this Lease and that it will not cancel nor change any policy of

insurance issued to NEW CINGULAR WIRELESS except for after thirty (30) days notice in writing has been supplied to the Owner. Owner(s) shall be added to the policy as additional insured. The fact that NEW CINGULAR WIRELESS is required to furnish insurance in accordance with this paragraph or the fact that such insurance is furnished does not and shall not relieve NEW CINGULAR WIRELESS from its obligations to Owner under the provisions of Paragraph 17 of this Lease for any deficiency, amount of which NEW CINGULAR WIRELESS is responsible to the Owner. Owner shall insure the property and building of which the site is part thereof, as the case may be, against loss or damage under a policy or policies of fire and extended coverage. All of Owner's and NEW CINGULAR WIRELESS' policies of insurance shall include a standard waiver of subrogation clause or endorsement. Owner and NEW CINGULAR WIRELESS each hereby waive all right of recovery against the other for losses covered by insurance.

All contractors employed by NEW CINGULAR WIRELESS and all subcontractors or any persons authorized by NEW CINGULAR WIRELESS to enter the site shall furnish to Owner, prior to Owner's permission to enter the site, certificates made out to Owner evidencing insurances in the same amounts as those required by NEW CINGULAR WIRELESS and under the same terms and conditions above required for NEW CINGULAR WIRELESS' insurance. Owner(s) shall be named insured on each of these policies. Alternatively, NEW CINGULAR WIRELESS may cover each or any of their contractors or suppliers on NEW CINGULAR WIRELESS' insurance policy, all limits to be the same as NEW CINGULAR WIRELESS' own coverage. Certificates showing covered contractors or suppliers as additional insured shall be forwarded to the Owner(s) prior to such contractors or suppliers being allowed to enter the site.

14. **NEW CINGULAR WIRELESS' Property** – All Antenna Facilities installed by NEW CINGULAR WIRELESS at the site shall remain the property of NEW CINGULAR WIRELESS and shall not be subject to any lien or encumbrance of Owner or any third party acting pursuant to an agreement with the Owner.
15. **Damage to Owner's Facilities** – NEW CINGULAR WIRELESS shall exercise all necessary precautions to avoid damage to the water tower, including contamination caused to the water supply and subject to the waivers contained in this Lease, hereby assumes all responsibility for any and all loss or damage to such facilities caused by NEW CINGULAR WIRELESS or any person or company authorized by NEW CINGULAR WIRELESS to perform work of any kind on the site. NEW CINGULAR WIRELESS shall report any damage caused by NEW CINGULAR WIRELESS, or any person or company authorized by NEW CINGULAR WIRELESS to work on the site, to the Owner immediately. NEW CINGULAR WIRELESS shall reimburse Owner for all costs of repairs including the costs for any required engineering and the costs for inspection of the damage before repair and after repair by the engineer and a report by the engineer to the Owner certifying that all repairs have been made properly.

16. **Water Tower Maintenance** – The Owner shall maintain in good order and repair the water tower so that it will adequately support all of NEW CINGULAR WIRELESS' Antenna Facilities. Owner shall not be responsible for making any structural changes to the water tower to facilitate the placement of NEW CINGULAR WIRELESS' Antenna Facilities, nor for making any modifications to the water tower to facilitate any changes of or modifications to NEW CINGULAR WIRELESS' Antenna Facilities.

When maintenance to the outside coating on the water tower is required, NEW CINGULAR WIRELESS shall do one of the following two options: NEW CINGULAR WIRELESS shall, at NEW CINGULAR WIRELESS' sole expense, temporarily relocate their antennae on a separate tower to be temporarily erected by NEW CINGULAR WIRELESS adjacent to the water tower, same to be removed immediately upon completion of water tower maintenance and site restored to original conditions, **OR**, NEW CINGULAR WIRELESS shall pay to Owner, in one lump sum payment, at the time the maintenance is performed, the difference in cost between what the maintenance operations would cost the Owner with the antennae and without the antennae on the water tower. Contractor to perform the maintenance shall be of the Owner's choosing. Owner shall provide NEW CINGULAR WIRELESS with copies of the quotation for maintenance both with NEW CINGULAR WIRELESS' equipment located on the water tower and without NEW CINGULAR WIRELESS' equipment located on the water tower.

Owner shall not make any guarantee to NEW CINGULAR WIRELESS that service will remain completely uninterrupted. Should it become necessary, for the safety of the water, the water system or the water tank, to perform an operation which requires the disconnection of the Antenna Facilities, Owner shall make a disconnection of the Antenna Facilities. Owner will notify NEW CINGULAR WIRELESS as soon as practicably possible of such disconnection and shall take reasonable care in the handling of the equipment to avoid damage to the extent reasonably possible. Owner shall not disrupt NEW CINGULAR WIRELESS' service except in cases of extreme emergency, as defined by Owner at time of incident, including, but not necessarily limited to, threats to public health, imminent structural failure, threats to the water system in general or rescue operations. Owner shall give NEW CINGULAR WIRELESS as much advanced notice of the intent to disrupt service as reasonably possible prior to commencing the disruption. NEW CINGULAR WIRELESS shall be allowed, if time allows under the circumstances, to make such disconnections or to witness the disconnection.

17. **Indemnity** – NEW CINGULAR WIRELESS agrees to indemnify, defend, and save harmless the Owner, its agents and employees, from and against all loss or expense (including costs and attorney fees) by reason of liability imposed by law upon the Owner for damages because of bodily injury, including death at any time resulting there from, sustained by any person or persons or on account of damage to property, including loss of use thereof, arising out of or in the consequence of the use of the site, whether such injuries to person or damage to property is due to the negligence of

NEW CINGULAR WIRELESS, its contractors or any person or company authorized by NEW CINGULAR WIRELESS to be on the site or the Owner. This indemnity shall extend to any liability of loss arising from contamination of the water system or the site or the environment as provided for in Paragraph 18 below. This indemnity shall not apply to intentional misconduct by the Owner.

Owner shall indemnify and hold harmless NEW CINGULAR WIRELESS from any and all costs (including, but not limited to reasonable attorney's fees and court costs) and claims of liability or loss which arise out of the use and/or occupancy of the site by NEW CINGULAR WIRELESS due solely to acts of intentional misconduct by the Owner.

18. **Hazardous Substances** – Owner represents that it has no knowledge, nor should it have any knowledge, of any substance, chemical or waste (collectively, "Substance") on the site which is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. NEW CINGULAR WIRELESS agrees not to introduce or use any Substance on the site in violation of any applicable law. Any chemicals of any kind, including solvents, cleaning solutions, paints and thinners or any chemical of any type not already present on the site, brought in by NEW CINGULAR WIRELESS or its contractors or any person or company authorized by NEW CINGULAR WIRELESS to be on the site shall be declared to the Owner in advance and the Material Safety Data Sheet (MSDS sheet) shall be furnished to the Owner prior to permission being given to NEW CINGULAR WIRELESS by the Owner for use of the chemical on the site.

Owner reserves the right to introduce onto the site at any time any Substance as defined above, which in the opinion of the Owner is applicable to the treatment of potable water or as necessary to be used in the course of maintenance of the water tower or site. Such materials may be stored by Owner on the site. Owner shall furnish NEW CINGULAR WIRELESS with MSDS sheets for any such Substance brought onto the site which NEW CINGULAR WIRELESS personnel, its contractors or any person or company authorized by NEW CINGULAR WIRELESS to be on the site may come into contact with during reasonable course of required activity on the site.

19. **Assignment** – This Lease may be freely assigned by NEW CINGULAR WIRELESS provided that no assignment shall relieve NEW CINGULAR WIRELESS of any of its obligations under this Lease, and provided further, that no assignee may use the water tower for other than a PCS communications system without the express written consent of the Owner. Upon such consent, any assignee assumes all applicable rights and obligations of this Lease. Any assignee to which this Lease may be assigned without Owners consent shall be bound by all terms and conditions of this Lease, especially those terms regarding insurance, liability and safety in the use of the site.

20. **Condemnation** – If all or substantially all of Owner's property upon which the site is located is condemned by an authorized governmental or quasi-governmental

authority, this Lease shall terminate upon the date of taking and each party shall have the right to maintain their own respective actions against the condemning authority for their respective damages and neither party shall have any interest in any award granted to the other. If a taking occurs, the rent shall be prorated to the date of the taking, and any excess prepaid rent shall be promptly repaid to NEW CINGULAR WIRELESS.

- 21. Termination** – NEW CINGULAR WIRELESS shall have the right to terminate this Lease at any time if (i) NEW CINGULAR WIRELESS cannot obtain all certificates, permits, licenses or other approvals (collectively, “Approvals”) required from any governmental authority and/or easements required from any third party to operate its communications facility; (ii) such Approvals are canceled, expire, lapse, withdrawn or terminated; (iii) Owner fails to hold legal title to the property on which the site is located; (iv) Owner does not have the legal right to enter into this Lease; or (v) for any other reason, NEW CINGULAR WIRELESS, in its sole discretion, determines that it will be unable to use the site for the use intended by this Lease. However, should NEW CINGULAR WIRELESS elect to terminate this Lease for any of the above reasons, NEW CINGULAR WIRELESS shall still be liable to Owner for any costs, charges or other fees which the Owner contracted for or has already paid out as required by any section of this Lease prior to the date Owner receives notification from NEW CINGULAR WIRELESS of intent to terminate.

Owner may terminate this Lease if NEW CINGULAR WIRELESS ceases operations at the site continuously for more than one (1) year. Owner may also terminate this Lease if NEW CINGULAR WIRELESS reneges on any payments due the Owner, becomes 90 days in arrears on rent payments or other payments due Owner, threatens the water supply by its actions or those of its contractors, threatens the structural integrity of the water tower or installs or operates the Antenna Facility which in any way impedes the operation of the water tower or threatens the safety of water system personnel.

Upon termination of this Lease, NEW CINGULAR WIRELESS shall remove all equipment including, but not limited to, antennae, cables, supports and electrical equipment. This shall be accomplished within a period of 60 calendar days upon termination. NEW CINGULAR WIRELESS shall be liable, upon removal of equipment, for the cost of Owner to have engineer certify that removal of the equipment has not damaged the water tower or other or the Owner’s facilities located on the site.

- 22. Notices** – All notices shall be in writing and shall be sent by U.S. certified mail, return receipt requested, or by overnight express delivery to the address of the party set forth above or as otherwise directed in writing by such party or as provided under applicable state law. Notice is deemed as of the date of delivery as shown on the return receipt of on the date of delivery of an express delivery as evidenced by the signature of the receiving party.

If to Lessee:
New Cingular Wireless PCS, LLC
Attn: Wireless Asset Management
Re: Cell Site #GRANMI4663; Cell Site Name: Fruitport WT
P. O. Box 2088
Rancho Cordova, CA 95741-2088

AND

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #GRANMI4663; Cell Site Name: Fruitport WT
6100 Atlantic Boulevard
Norcross, GA 30071

With a copy to:
New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site #GRANMI4663; Cell Site Name: Fruitport WT
15 E. Midland Avenue
Paramus, NJ 07652

If to Owners:
Muskegon County Department of Public Works
131 E. Apple Avenue, 4th Floor
Muskegon, MI 49442

23. **Compliance with Laws** – Owner represents that Owner's property (including, without limitation, the site) and all improvements thereto, are in compliance with all building life/safety, disability and other laws, codes and regulations of any governmental or quasi-governmental authority. NEW CINGULAR WIRELESS agrees that, subject to Owner's compliance with the terms of this paragraph, any improvements constructed by NEW CINGULAR WIRELESS on the site and all operations of NEW CINGULAR WIRELESS within the site shall be in compliance with all applicable laws, codes and regulations.

24. **Miscellaneous** –

- A. Owner represents and warrants that Owner has full authority to enter into and sign this Lease.
- B. The terms and conditions of the Lease shall extend to and bind the heirs, personal representatives, successors and assigns of Owner and NEW CINGULAR WIRELESS.

- C. The prevailing party in any action or proceeding in court to enforce the terms of this Lease shall be entitled to receive its reasonable attorney fees and other reasonable enforcement costs and expenses from the non-prevailing party.
- D. This Lease shall be construed pursuant to the laws of the State of Michigan.
- E. This site Lease may not be amended or modified unless the Owner and NEW CINGULAR WIRELESS consent in writing to the amendment or modification.
- F. This Lease contains all agreements, promises and understandings between Owner and NEW CINGULAR WIRELESS. All exhibits are incorporated by reference.
- G. No signs may be installed on the site by NEW CINGULAR WIRELESS with the exception of warning labels required on certain electrical equipment or other warning labels required by OSHA or MIOSHA regulations.

IN WITNESS WHEREOF, this Fruitport Township/City of Norton Shores water tank usage lease has been duly executed as of the dates set forth in the notarial acknowledgements below, to be effective for all purposes as of the date first above written.

WITNESS:

Robert Alder
ROBERT ALDER
Lela S. Miller
LELA S. MILLER

Pat Westjohn
PAT WESTJOHN

Constance W. Waldo
CONSTANCE W. WALDO

TOWNSHIP OF FRUITPORT
By: [Signature]
Supervisor / HOWARD COOPER

Date: 9/7/05

By: Carol Hulka
Clerk / CAROL HULKA

Date: September 13 2005

CITY OF NORTON SHORES
By: Nancy Crandall
Mayor / NANCY CRANDALL

Date: September 7, 2005

By: Linne A. Fuller
City Clerk / LYNNE A. FULLER

Date: September 7, 2005

John K. Warner
JOHN K. WARNER

Karen Fisher
Karen Fisher

Suzanne Wilson
Suzanne Wilson

Marie St. Cyr
MARIE ST. CYR

COUNTY OF MUSKEGON
BOARD OF PUBLIC WORKS

By: 21 SEPTEMBER 2005

Date: Louis McMuray
Louis McMuray, Chair, Board of Public Works

NEW CINGULAR WIRELESS PCS, LLC

By: Daniel Toth
Daniel Toth, Karen Dickson

Its: Real Estate and Construction Manager

Date: 8/24/05

EXHIBIT B

Copy of the Lease Agreement for iPCS Wireleses, Inc.

Sprint/Nextel

**SITE LEASE AGREEMENT
REGARDING THE USE OF THE
FRUITPORT WATER TANK**

- A. **Owners** – The Owners, for the purpose of this Lease, will be the Charter Township of Fruitport, City of Norton Shores and County of Muskegon. Owner’s representative for all contact and access shall be Mr. Dale Lee, Fruitport Charter Township Interim Utility Director. Mr. Lee may be contacted at (231) 865-3158 or faxed at (231) 865-3118.

- B. **Lessee** – The Lessee shall be iPCS Wireless, Inc., (iPCS) a Delaware corporation having a mailing address of 648 N. Chicago St., Geneseo, IL 61254. The Lessee’s designated representative shall be Nathan Olson, Property Manager who can be contacted at (616) 656-5161 or faxed at (616) 554-6484. The designated representative shall be the person authorized to request access to the Site and be the person contacted for communication purposes.

- C. **Communication** – Communication between the Owners and iPCS shall be performed through their respective representatives listed above. This will prevent unauthorized entrance to the Site and will minimize the chances for miscommunication between the parties.
 - 1. **Leased Site** iPCS will be allowed a 200 square foot area (10 feet x 20 feet) outside of the tower base but close to it for the purpose of locating electrical cabinet and equipment including electrical service and telephone service.

 - 2. **Term** – The initial term (“**Initial Term**”) of this Lease shall be for a period of five (5) years commencing on the date the Lease is executed on behalf of iPCS (the “**Commencement Date**”).

 - 3. **Rental** – initial rent for use of the Site shall be \$650.00/month per send and receive (pair) antenna installation as per print submitted for the first year with a 3% increase per year for the remaining period of the Lease. Rent payment for each month shall be due on the fifth day of that month. Rental payments shall commence beginning with the month that the Antenna Facility is put into service. Rent payment for the first month shall be prorated for the amount of days the Antenna Facility is in service, and payment for the first month is due no later than one week after the Antenna Facility is placed into service. Rental payments received after the (5TH) fifth of the month shall be assessed a 10% penalty. Rental payments shall be sent to:

Muskegon County Department of Public Works
131 E. Apple Avenue, 4th floor
Muskegon, MI 49442

Rental payments shall be deposited in the Fruitport-Norton Shores regional Water Fund with Muskegon County.

The Muskegon County Department of Public Works should be contacted at the above address by the Lessee with any rental payment questions or concerns.

For any rental payment questions or concerns such as late payments Muskegon County Department of Public Works should contact:

iPCS Wireless, Inc.
648 N. Chicago St.
Geneseo, IL 61254
Attn: Lease Management

4. **Renewal Option** – the term of this lease may be extended by iPCS for three additional five year periods provided that iPCS gives the Owner notice of its intention to extend the term of this lease at least ninety days prior to the expiration of the current term. Owner has the option of renegotiating terms of the lease for each extension beyond the original lease period. Lease period shall be extended only with Owner approval. Owner approval shall not be unreasonably withheld such that iPCS' service would be disrupted. Monetary compensation for use of the facilities shall remain as stated in paragraph #3 of this lease unless one of the following occur:
 - A. Number of antennae or appurtenances on tower has increased during previous lease period or type of antennae or appurtenances has changed.
 - B. Rate of inflation during the final two years of the previous lease period has averaged an increase equal to or greater than 3 percent.
5. **Possession** – iPCS shall be allowed use of the Site beginning on the Commencement Date.
6. **Use of Premises** –
 - A. iPCS may use the property for the installation, operation and maintenance of its Antenna Facilities for the transmission, reception and operation of a communications system and uses incidental thereto in accordance with the terms of this lease, and for the storage of related equipment provided that such equipment be contained within the ground area provided for in section I of this agreement. The Owner may permit others to use portions of the water tower. iPCS' installation of all such antenna facilities shall be done according to the plans and specifications approved by the Owner. Plans and specifications for any installation or maintenance of a structural nature shall be reviewed by the Owner's

engineer. Owner's engineer shall be selected by the Owner and paid for by iPCS for work associated with the review of plans and inspection of work performed on the iPCS system. iPCS shall be strictly liable for any contamination caused to the water in the tower or damage done to the water tower and/or the site during installation and/or during operations by iPCS or any of its contractors or suppliers. Any contamination caused to the water in the tower or in the system by iPCS or any of its subcontractors or employees shall be remedied by the Owner at the sole cost of iPCS. Any event which may be the cause of a contamination problem shall be reported to the Owner immediately upon its occurrence. Any damage caused to the tank or the site during installation or operations of the Antenna Facility shall be repaired or replaced at the Owner's discretion and at the expense of iPCS to the Owner's sole satisfaction.

- B. iPCS shall, at its expense, comply with all present and future federal, state and local laws, ordinances, rules and regulations (including, but not limited to, laws relating to health, radio frequency emissions, other radiation, safety, OSHA and MIOSHA), where applicable, in connection with the use, operation, construction, maintenance and/or installation of the Antenna Facilities and/or premises. Owner agrees to reasonably cooperate with iPCS in obtaining any federal licenses and permits required for or substantially required by iPCS' use of the premises and all costs incurred by the Owner to aid iPCS shall be reimbursed by iPCS to the Owner, including postage, shipping, labor, costs of reproduction or any other costs which can be attributed to the securing of the permits.
- C. Upon termination of this lease, if requested by the Owner to do so, iPCS shall remove the Antenna Facilities and all supporting structures and related hardware and equipment which are not shared or used by another user of the water tower. Such removal shall be in a workmanlike and careful manner and without interference or damage to the water tower, the water in the tower or system, or any other equipment, structures or operations on the site, including use of the site by the Owner or any of the Owner's assignees or lessees. Removal shall be completed within 30 calendar days of the day iPCS receives the notification to remove the antenna facilities. Owner's engineer shall observe all removal and shall inspect for damage, the Owner's site, water tower and all other facilities associated with iPCS' use of the water tank. Engineer shall make a report to the Owner of any damage and recommended repairs. Repairs shall be made by the Owner or a contractor hired by the Owner, and all costs of repairs and the costs of the engineer shall be paid for by iPCS.
- D. The Owner reserves the right to install additional bracketing material or similar structural supports to allow for the co-location of other lessees' antenna or similar radiating or broadcasting equipment. The Owner

agrees that, should the Owner desire to allow co-location on its water tower, reasonable and necessary assurances will be made to iPCS that such co-location will not cause harm to iPCS' antenna or radiating equipment.

E. Permission shall be secured from the Owner any time that iPCS personnel or personnel of any contractor or supplier employed by iPCS desires to enter the tank structure. iPCS may place their own padlock in tandem with Fruitport Township's lock on the gates to the site, thereby allowing iPCS or its designated personnel 24 hour per day/7 day per week access to the site. Should emergency access to the tower structure be required, the following contact persons/numbers shall be used:

- | | | | |
|----|---------------|----------------|-------|
| 1. | Dale Lee | (231) 865-3158 | work |
| | | (231) 777-3732 | home |
| | | (231) 339-0996 | pager |
| 2. | Dale Hilliard | (231) 865-3158 | work |
| | | (231) 788-2396 | home |
| | | (231) 339-0774 | pager |

7. **Antenna Replacement** – iPCS may update or replace the Antenna Facilities from time to time with the prior written approval of the Owner, provided that the replacement facilities are not greater in number or size than the existing facilities and that any change in their location on the tower is satisfactory to the Owner. Owner shall have a period of 90 days to grant approval, during which time, Owner may employ an engineer to review plans and specifications for iPCS' proposed modifications. Engineer shall also inspect tank and site prior to installation of modifications, perform inspection of the installation of the modifications and perform an inspection after installation of the modifications and submit a report to the Owner. Engineer services shall be secured by the Owner and paid for by iPCS.

8. **Maintenance** –

- A. iPCS shall, at its own expense, maintain any antenna facilities on or attached to the premises in a safe condition, in good repair and in a manner suitable to the Owner so as not to conflict with the use of, or other leasing of the tower by the Owner. In carrying out its maintenance responsibilities, iPCS shall not in any way interfere with the use or operations of the water tower, the premises, related facilities and/or any other property or equipment owned by other tenants or the Owner.
- B. iPCS shall have sole responsibility for the maintenance, repair and security of its equipment, personal property, Antenna Facilities and leasehold improvements and shall keep the same in good repair and condition for the life of this Lease.

- C. iPCS shall keep the premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference.
9. **Utilities** – Owner agrees to cooperate with iPCS in iPCS' efforts to obtain electric and other utilities from any location provided by the servicing utility. iPCS shall contract directly with the necessary utility companies to provide service to iPCS' facilities. Accounts shall be in the name of iPCS and shall in no way involve the Owner. All charges for monthly service, installation or de-installation costs shall be the sole responsibility of iPCS and shall be billed directly to iPCS by the utility. Owner shall provide an acceptable easement for utilities to run their lines from the property line to iPCS' facilities.
10. **Taxes** – iPCS shall be responsible for paying all personal property taxes assessed directly upon and arising solely from its own use of the Antenna Facilities on the site during the term of this lease.
11. **Use of Technicians/Inspectors** – Notwithstanding anything contained herein to the contrary, in order to protect the health, welfare and safety of its residents, the Owner shall have the right to have a technician and/or inspector witness all work done at the site by iPCS or its contractors. Accordingly, iPCS shall give the Owner advanced notice of all non-emergency work to be performed on the site. For emergency work, - iPCS shall give the Owner as much advanced notice as reasonably practicable. In any case iPCS shall obtain keys to the facility from the Owner each time access is required and shall promptly return keys to the Owner upon completion of the work.
12. **Interference** – iPCS' installation, operation and maintenance of its transmission facilities shall not damage or interfere in any way with the Owner's water tower operations including repairs or maintenance to the water tower or with the activities of any other tenants of the water tower. Owner, at all times during the life of this lease, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the premises in connection with the water tower operations as may be necessary, including leasing parts of the water tower and surrounding ground space to others.

If the Owner receives a request for co-location on the water tower from any third-party, it shall submit a proposal complete with all technical specifications reasonably requested by iPCS to iPCS for review for non-interference; however, Owner shall not be required to provide iPCS with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for preparing technical specifications for its proposed transmission facility. iPCS shall have thirty (30) calendar days following receipt of said proposal to make any objections thereto, and failure to make any objection within said thirty (30) day period shall be deemed consent by iPCS to the installation of antennae or transmission facilities pursuant to said proposal. If iPCS gives notice of objection

due to interference during such thirty (30) day period and iPCS' objections are verified by the Owner to be valid, then the Owner shall not proceed with the proposal. iPCS shall furnish the Owner with all required technical specifications reasonably requested in order that Owner may be able to verify any objection raised by iPCS. Failure or refusal on the part of iPCS to provide the required technical specifications within a reasonable time as set forth at the time of Owner's request, shall render iPCS' objection void and Owner may proceed with third party leasing.

13. **Insurance** – iPCS shall maintain, at its sole expense during the Term of this Lease commercial general liability insurance insuring iPCS against liability for personal injury, death or damage to personal property arising out of the use of the site by iPCS. Such insurances shall be in the amount not less than \$1,000,000.00 (\$1 million) per occurrence for each personal injury, death and property damage. iPCS shall carry an excess umbrella liability policy in the amount not less than \$2,000,000.00 (\$2 million), which shall not exclude the payment of all costs incurred to remedy a contamination event to the public water system caused by iPCS or any of its contractors or suppliers per occurrence. iPCS shall carry all proper insurances, and in amounts as prescribed by law, on its employees and contractors including, but not limited to, unemployment and workers compensation insurance. iPCS shall provide the Owner with valid certificates of all required insurances and in the required amounts, prior to being allowed to enter the site. Insurance carrier's certificate shall show evidence that it has insured iPCS for all liabilities under this Lease and that it will not cancel nor change any policy of insurance issued to iPCS except for after thirty (30) days notice in writing has been supplied to the Owner. Owner(s) shall be added to the policy as additional insured. The fact that iPCS is required to furnish insurance in accordance with this paragraph or the fact that such insurance is furnished does not and shall not relieve iPCS from its obligations to Owner under the provisions of Paragraph 17 of this Lease for any deficiency, amount of which iPCS is responsible to the Owner. Owner shall insure the property and building of which the site is part thereof, as the case may be, against loss or damage under a policy or policies of fire and extended coverage. All of Owner's and iPCS policies of insurance shall include a standard waiver of subrogation clause or endorsement. Owner and iPCS each hereby waive all right of recovery against the other for losses covered by insurance.

All contractors employed by iPCS and all subcontractors or any persons authorized by iPCS to enter the site shall furnish to Owner, prior to Owner's permission to enter the site, certificates made out to Owner evidencing insurances in the same amounts as those required by iPCS and under the same terms and conditions above required for -- iPCS' insurance. Owner(s) shall be named insured on each of these policies. Alternatively, iPCS may cover each or any of their contractors or suppliers on iPCS' insurance policy, all limits to be the same as iPCS' own coverage. Certificates showing covered contractors or suppliers as additional insured shall be forwarded to the Owner(s) prior to such contractors or suppliers being allowed to enter the site.

14. **iPCS' Property** – All Antenna Facilities installed by iPCS at the site shall remain the property of iPCS and shall not be subject to any lien or encumbrance of Owner or any third party acting pursuant to an agreement with the Owner.
15. **Damage to Owner's Facilities** – iPCS shall exercise all necessary precautions to avoid damage to the water tower, including contamination caused to the water supply and subject to the waivers contained in this Lease, hereby assumes all responsibility for any and all loss or damage to such facilities caused by iPCS or any person or company authorized by iPCS to perform work of any kind on the site. iPCS shall report any damage caused by iPCS, or any person or company authorized by iPCS to work on the site, to the Owner immediately. iPCS shall reimburse Owner for all costs of repairs including the costs for any required engineering and the costs for inspection of the damage before repair and after repair by the engineer and a report by the engineer to the Owner certifying that all repairs have been made properly.
16. **Water Tower Maintenance** – The Owner shall maintain in good order and repair the water tower so that it will adequately support all of iPCS' Antenna Facilities. Owner shall not be responsible for making any structural changes to the water tower to facilitate the placement of iPCS' Antenna Facilities, nor for making any modifications to the water tower to facilitate any changes of or modifications to iPCS' Antenna Facilities.

When maintenance to the outside coating on the water tower is required, iPCS shall do one of the following two options: iPCS shall, at iPCS' sole expense, temporarily relocate their antennae on a separate tower to be temporarily erected by iPCS adjacent to the water tower, same to be removed immediately upon completion of water tower maintenance and site restored to original conditions, **OR**, iPCS shall pay to Owner, in one lump sum payment, at the time the maintenance is performed, the difference in cost between what the maintenance operations would cost the Owner with the antennae and without the antennae on the water tower. Contractor to perform the maintenance shall be of the Owner's choosing. Owner shall provide iPCS with copies of the quotation for maintenance both with iPCS' equipment located on the water tower and without iPCS' equipment located on the water tower.

Owner shall not make any guarantee to iPCS that service will remain completely uninterrupted. Should it become necessary, for the safety of the water, the water system or the water tank, to perform an operation which requires the disconnection of the Antenna Facilities, Owner shall make a disconnection of the Antenna Facilities. Owner will notify iPCS as soon as practicably possible of such disconnection and shall take reasonable care in the handling of the equipment to avoid damage to the extent reasonably possible. Owner shall not disrupt iPCS' service except in cases of extreme emergency, as defined by Owner at time of incident, including, but not necessarily limited to, threats to public health, imminent structural failure, threats to the water system in general or rescue operations. Owner shall give iPCS as much advanced notice of the intent to disrupt service as reasonably possible prior to

commencing the disruption. iPCS shall be allowed, if time allows under the circumstances, to make such disconnections or to witness the disconnection.

17. **Indemnity** – iPCS agrees to indemnify, defend, and save harmless the Owner, its agents and employees, from and against all loss or expense (including costs and attorney fees) by reason of liability imposed by law upon the Owner for damages because of bodily injury, including death at any time resulting there from, sustained by any person or persons or on account of damage to property, including loss of use thereof, arising out of or in the consequence of the use of the site, whether such injuries to person or damage to property is due to the negligence of iPCS, its contractors or any person or company authorized by iPCS to be on the site or the Owner. This indemnity shall extend to any liability of loss arising from contamination of the water system or the site or the environment as provided for in Paragraph 18 below. This indemnity shall not apply to intentional misconduct by the Owner.

Owner shall indemnify and hold harmless iPCS from any and all costs (including, but not limited to reasonable attorney's fees and court costs) and claims of liability or loss which arise out of the use and/or occupancy of the site by iPCS due solely to acts of intentional misconduct by the Owner.

18. **Hazardous Substances** – Owner represents that it has no knowledge, nor should it have any knowledge, of any substance, chemical or waste (collectively, "Substance") on the site which is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. iPCS agrees not to introduce or use any Substance on the site in violation of any applicable law. Any chemicals of any kind, including solvents, cleaning solutions, paints and thinners or any chemical of any type not already present on the site, brought in by iPCS or its contractors or any person or company authorized by iPCS to be on the site shall be declared to the Owner in advance and the Material Safety Data Sheet (MSDS sheet) shall be furnished to the Owner prior to permission being given to iPCS by the Owner for use of the chemical on the site.

Owner reserves the right to introduce onto the site at any time any Substance as defined above, which in the opinion of the Owner is applicable to the treatment of potable water or as necessary to be used in the course of maintenance of the water tower or site. Such materials may be stored by Owner on the site. Owner shall furnish iPCS with MSDS sheets for any such Substance brought onto the site which iPCS personnel, its contractors or any person or company authorized by iPCS to be on the site may come into contact with during reasonable course of required activity on the site.

19. **Assignment** – This Lease may be freely assigned by iPCS provided that no assignment shall relieve iPCS of any of its obligations under this Lease, and provided further, that no assignee may use the water tower for other than a PCS communications system without the express written consent of the Owner. Upon such consent, any assignee assumes all applicable rights and obligations of this Lease.

Any assignee to which this Lease may be assigned without Owners consent shall be bound by all terms and conditions of this Lease, especially those terms regarding insurance, liability and safety in the use of the site.

20. **Condemnation** – If all or substantially all of Owner’s property upon which the site is located is condemned by an authorized governmental or quasi-governmental authority, this Lease shall terminate upon the date of taking and each party shall have the right to maintain their own respective actions against the condemning authority for their respective damages and neither party shall have any interest in any award granted to the other. If a taking occurs, the rent shall be prorated to the date of the taking, and any excess prepaid rent shall be promptly repaid to iPCS.
21. **Termination** – iPCS shall have the right to terminate this Lease at any time if (i) iPCS cannot obtain all certificates, permits, licenses or other approvals (collectively, “Approvals”) required from any governmental authority and/or easements required from any third party to operate its communications facility; (ii) such Approvals are canceled, expire, lapse, withdrawn or terminated; (iii) Owner fails to hold legal title to the property on which the site is located; (iv) Owner does not have the legal right to enter into this Lease; or (v) for any other reason, iPCS, in its sole discretion, determines that it will be unable to use the site for the use intended by this Lease. However, should iPCS elect to terminate this Lease for any of the above reasons, iPCS shall still be liable to Owner for any costs, charges or other fees which the Owner contracted for or has already paid out as required by any section of this Lease prior to the date Owner receives notification from iPCS of intent to terminate.

Owner may terminate this Lease if iPCS ceases operations at the site continuously for more than one (1) year. Owner may also terminate this Lease if iPCS reneges on any payments due the Owner, becomes 90 days in arrears on rent payments or other payments due Owner, threatens the water supply by its actions or those of its contractors, threatens the structural integrity of the water tower or installs or operates the Antenna Facility which in any way impedes the operation of the water tower or threatens the safety of water system personnel.

Upon termination of this Lease, iPCS shall remove all equipment including, but not limited to, antennae, cables, supports and electrical equipment. This shall be accomplished within a period of 60 calendar days upon termination. iPCS shall be liable, upon removal of equipment, for the cost of Owner to have engineer certify that removal of the equipment has not damaged the water tower or other or the Owner’s facilities located on the site.

22. **Notices** – All notices shall be in writing and shall be sent by U.S. certified mail, return receipt requested, or by overnight express delivery to the address of the party set forth above or as otherwise directed in writing by such party of as provided under applicable state law. Notice is deemed as of the date of delivery as shown on the return receipt of on the date of delivery of an express delivery as evidenced by the signature of the receiving party.

If to Lessee:
iPCS Wireless
648 N. Chicago St.
Geneseo, IL 61254
Attn: Lease Management

With a copy to:

iPCS Wireless
4717 Broadmoor Ave. SE
Suite G
Kentwood, MI 49512
Attn: Lease Management

Re: Cell Site AW 310321; Cell Site Name: Fruitport WT

AND

If to Owners:
Muskegon County Department of Public Works
131 E. Apple Avenue, 4th Floor
Muskegon, MI 49442

23. **Compliance with Laws** – Owner represents that Owner's property (including, without limitation, the site) and all improvements thereto, are in compliance with all building life/safety, disability and other laws, codes and regulations of any governmental or quasi-governmental authority. iPCS agrees that, subject to Owner's compliance with the terms of this paragraph, any improvements constructed by iPCS on the site and all operations of iPCS within the site shall be in compliance with all applicable laws, codes and regulations.

24. Miscellaneous –

- A. Owner represents and warrants that Owner has full authority to enter into and sign this Lease.
- B. The terms and conditions of the Lease shall extend to and bind the heirs, personal representatives, successors and assigns of Owner and iPCS.
- C. The prevailing party in any action or proceeding in court to enforce the terms of this Lease shall be entitled to receive its reasonable attorney fees

and other reasonable enforcement costs and expenses from the non-prevailing party.

- D. This Lease shall be construed pursuant to the laws of the State of Michigan.
- E. This site Lease may not be amended or modified unless the Owner and iPCS consent in writing to the amendment or modification.
- F. This Lease contains all agreements, promises and understandings between Owner and iPCS. All exhibits are incorporated by reference.
- G. No signs may be installed on the site by iPCS with the exception of warning labels required on certain electrical equipment or other warning labels required by OSHA or MIOSHA regulations.

IN WITNESS WHEREOF, this Fruitport Township/City of Norton Shores water tank usage lease has been duly executed as of the dates set forth in the notarial acknowledgements below, to be effective for all purposes as of the date first above written.

WITNESS:

Joan Stark

Robert Paslucha

Herald A. Bantzer

Pat Westjohn

TOWNSHIP OF FRUITPORT

By: [Signature]

Date: 9/7/08

By: Carol Huebka

Date: 9-4-08

CITY OF NORTON SHORES

By: [Signature]

Date: 9/8/08

By: [Signature]

Date: 9-8-08

COUNTY OF MUSKEGON

Karen Fisher

Karen Fisher

John K. Warner

John K. Warner

John Moore

Kristen Dedmon

By: Louis McMurray

Louis McMurray

Date: 10-9-08

IPCS WIRELESS

By: David Zylka

DAY ^{AD} L. ZYLKA
~~Craig Kinley, Sr. VP of Engineering and Operations~~

Date: 10/30/2008

EXHIBIT C

Copy of the Lease Agreement for MetroPCS Michigan, Inc.

T-Middle

**SITE LEASE AGREEMENT
REGARDING THE USE OF THE
FRUITPORT WATER TANK**

- A. **Owners** – The Owners, for the purpose of this Lease, will be Township of Fruitport, City of Norton Shores and County of Muskegon. Owner’s representative for all contact and access shall be Mr. Matt Farrar , Fruitport Public Works Director. Mr. Farrar may be contacted at (231) 865-3151 or faxed at (231) 865-3118.

- B. **Lessee** – The Lessee shall be MetroPCS Michigan, Inc. a Delaware Corporation, having a mailing address of 28505 Schoolcraft Rd, Building 6, Livonia, MI 48150, hereafter referred to as “MetroPCS”. The Lessee’s designated representative shall be Tom McMahon who can be contacted at (734) 444-0041 or faxed at (734)444-0503. The designated representative shall be the person authorized to request access to the Site and be the person contacted for communication purposes.

- C. **Communication** – Communication between the Owners and MetroPCS shall be performed through their respective representatives listed above. This will prevent unauthorized entrance to the Site and will minimize the chances for miscommunication between the parties.
 - 1. **Leased Site** –MetroPCS will be allowed a 240 square foot area (12 feet x 20 feet) outside of the tower base but close to it for the purpose of locating electrical cabinet and equipment including electrical service and telephone service.

 - 2. **Term** – The initial term (“Initial Term”) of this Lease shall be for a period of five (5) years commencing on the date the Lease is executed on behalf of MetroPCS (the “Commencement Date”).

 - 3. **Rental** – initial rent for use of the Site shall be \$650.00 /month per send and receive (pair)antenna as per print submitted for the first year with a 3% increase per year for the remaining period of the Lease. Rent payment for each month shall be due on the fifth day of that month. Rental payments shall commence beginning with the month that the Antenna Facility is put into service. Rent payment for the first month shall be prorated for the amount of days the Antenna Facility is in service, and payment for the first month is due no later than one week after the Antenna Facility is placed into service. Rental payments received after the (5TH) fifth of the month shall be assessed a 10% penalty. Rental payments shall be sent to:

Muskegon County Department of Public Works
131 E. Apple Avenue, 4th floor
Muskegon, MI 49442

Rental payments shall be deposited in the Fruitport-Norton Shores regional Water Fund with Muskegon County.

The Muskegon County Department of Public Works should be contacted at the above address by the Lessee with any rental payment questions or concerns.

For any rental payment questions or concerns such as late payments Muskegon County Department of Public Works should contact:

MetroPCS Michigan, Inc. Phone: 734-444-0100
28505 Schoolcraft Rd. Bldg. 6 Fax: 734-444-0503
Livonia, MI 48150

4. **Renewal Option** – the term of this lease may be extended by MetroPCS for three additional five year periods provided that MetroPCS gives the Owner notice of its intention to extend the term of this lease at least ninety days prior to the expiration of the current term. Owner has the option of renegotiating terms of the lease for each extension beyond the original lease period. Lease period shall be extended only with Owner approval. Owner approval shall not be unreasonably withheld such that MetroPCS' service would be disrupted. Monetary compensation for use of the facilities shall remain as stated in paragraph #3 of this lease unless one of the following occur:
 - A. Number of antennae or appurtenances on tower has increased during previous lease period or type of antennae or appurtenances has changed.
 - B. Rate of inflation during the final two years of the previous lease period has averaged an increase equal to or greater than 3 percent.
5. **Possession** – MetroPCS shall be allowed use of the Site beginning on the Commencement Date.
6. **Use of Premises** –
 - A. MetroPCS may use the property for the installation, operation and maintenance of its Antenna Facilities for the transmission, reception and operation of a communications system and uses incidental thereto in accordance with the terms of this lease, and for the storage of related equipment provided that such equipment be contained within the ground area provided for in section 1 of this agreement. The Owner may permit others to use portions of the water tower. MetroPCS' installation of all such antenna facilities shall be done according to the plans and specifications approved by the Owner. Plans and specifications for any installation or maintenance of a structural nature shall be reviewed by the Owner's engineer. Owner's engineer shall be selected by the Owner and paid for by MetroPCS for work associated with the review of plans and inspection of work performed on the MetroPCS system. MetroPCS

shall be strictly liable for any contamination caused to the water in the tower or damage done to the water tower and/or the site during installation and/or during operations by MetroPCS or any of its contractors or suppliers. Any contamination caused to the water in the tower or in the system by MetroPCS or any of its subcontractors or employees shall be remedied by the Owner at the sole cost of MetroPCS. Any event which may be the cause of a contamination problem shall be reported to the Owner immediately upon its occurrence. Any damage caused to the tank or the site during installation or operations of the Antenna Facility shall be repaired or replaced at the Owner's discretion and at the expense of MetroPCS to the Owner's sole satisfaction.

- B. MetroPCS shall, at its expense, comply with all present and future federal, state and local laws, ordinances, rules and regulations (including, but not limited to, laws relating to health, radio frequency emissions, other radiation, safety, OSHA and MIOSHA), where applicable, in connection with the use, operation, construction, maintenance and/or installation of the Antenna Facilities and/or premises. Owner agrees to reasonably cooperate with MetroPCS in obtaining any federal licenses and permits required for or substantially required by MetroPCS' use of the premises and all costs incurred by the Owner to aid MetroPCS shall be reimbursed by MetroPCS to the Owner, including postage, shipping, labor, costs of reproduction or any other costs which can be attributed to the securing of the permits.
- C. Upon termination of this lease, if requested by the Owner to do so, MetroPCS shall remove the Antenna Facilities and all supporting structures and related hardware and equipment which are not shared or used by another user of the water tower. Such removal shall be in a workmanlike and careful manner and without interference or damage to the water tower, the water in the tower or system, or any other equipment, structures or operations on the site, including use of the site by the Owner or any of the Owner's assignees or lessees. Removal shall be completed within 30 calendar days of the day MetroPCS receives the notification to remove the antenna facilities. Owner's engineer shall observe all removal and shall inspect for damage, the Owner's site, water tower and all other facilities associated with MetroPCS' use of the water tank. Engineer shall make a report to the Owner of any damage and recommended repairs. Repairs shall be made by the Owner or a contractor hired by the Owner, and all costs of repairs and the costs of the engineer shall be paid for by MetroPCS.
- D. The Owner reserves the right to install additional bracketing material or similar structural supports to allow for the co-location of other lessees' antenna or similar radiating or broadcasting equipment. The Owner agrees that, should the Owner desire to allow co-location on its water tower, reasonable and necessary assurances will be made to MetroPCS

that such co-location will not cause harm to MetroPCS' antenna or radiating equipment.

- E. Permission shall be secured from the Owner any time that MetroPCS personnel or personnel of any contractor or supplier employed by MetroPCS desires to enter the tank structure. MetroPCS may place their own padlock in tandem with Fruitport Township's lock on the gates to the site, thereby allowing MetroPCS or its designated personnel 24 hour per day/7 day per week access to the site. Should emergency access to the tower structure be required, the following contact persons/numbers shall be used:

1. Matthew Farrar	(231) 865-3158	work
	(231) 865-7667	home
	(231) 339-0662	pager

2. Dale Hilliard	(231) 865-3158	work
	(231) 788-2396	home
	(231) 339-0774	pager

- 7. **Antenna Replacement** – MetroPCS may update or replace the Antenna Facilities from time to time with the prior written approval of the Owner, provided that the replacement facilities are not greater in number or size than the existing facilities and that any change in their location on the tower is satisfactory to the Owner. Owner shall have a period of 90 days to grant approval, during which time, Owner may employ an engineer to review plans and specifications for MetroPCS' proposed modifications. Engineer shall also inspect tank and site prior to installation of modifications, perform inspection of the installation of the modifications and perform an inspection after installation of the modifications and submit a report to the Owner. Engineer services shall be secured by the Owner and paid for by MetroPCS.

8. **Maintenance** –

- A. MetroPCS shall, at its own expense, maintain any antenna facilities on or attached to the premises in a safe condition, in good repair and in a manner suitable to the Owner so as not to conflict with the use of, or other leasing of the tower by the Owner. In carrying out its maintenance responsibilities, MetroPCS shall not in any way interfere with the use or operations of the water tower, the premises, related facilities and/or any other property or equipment owned by other tenants or the Owner.
- B. MetroPCS shall have sole responsibility for the maintenance, repair and security of its equipment, personal property, Antenna Facilities and leasehold improvements and shall keep the same in good repair and condition for the life of this Lease.

- C. MetroPCS shall keep the premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference.
9. **Utilities** – Owner agrees to cooperate with MetroPCS in MetroPCS' efforts to obtain electric and other utilities from any location provided by the servicing utility. MetroPCS shall contract directly with the necessary utility companies to provide service to MetroPCS' facilities. Accounts shall be in the name of MetroPCS and shall in no way involve the Owner. All charges for monthly service, installation or de-installation costs shall be the sole responsibility of MetroPCS and shall be billed directly to MetroPCS by the utility. Owner shall provide an acceptable easement for utilities to run their lines from the property line to MetroPCS' facilities.
10. **Taxes** – MetroPCS shall be responsible for paying all personal property taxes assessed directly upon and arising solely from its own use of the Antenna Facilities on the site during the term of this lease.
11. **Use of Technicians/Inspectors** – Notwithstanding anything contained herein to the contrary, in order to protect the health, welfare and safety of its residents, the Owner shall have the right to have a technician and/or inspector witness all work done at the site by MetroPCS or its contractors. Accordingly, MetroPCS shall give the Owner advanced notice of all non-emergency work to be performed on the site. For emergency work, MetroPCS shall give the Owner as much advanced notice as reasonably practicable. In any case MetroPCS shall obtain keys to the facility from the Owner each time access is required and shall promptly return keys to the Owner upon completion of the work.
12. **Interference** – MetroPCS' installation, operation and maintenance of its transmission facilities shall not damage or interfere in any way with the Owner's water tower operations including repairs or maintenance to the water tower or with the activities of any other tenants of the water tower. Owner, at all times during the life of this lease, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the premises in connection with the water tower operations as may be necessary, including leasing parts of the water tower and surrounding ground space to others.

If the Owner receives a request for co-location on the water tower from any third-party, it shall submit a proposal complete with all technical specifications reasonably requested by ----- to MetroPCS for review for non-interference; however, Owner shall not be required to provide MetroPCS with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for preparing technical specifications for its proposed transmission facility. MetroPCS shall have thirty (30) calendar days following receipt of said proposal to make any objections thereto, and failure to make any objection within said thirty (30) day period shall be deemed consent by MetroPCS to the installation of antennae or transmission facilities pursuant to said proposal. If MetroPCS gives notice of objection due to interference during such

thirty(30) day period and MetroPCS' objections are verified by the Owner to be valid, then the Owner shall not proceed with the proposal. MetroPCS shall furnish the Owner with all required technical specifications reasonably requested in order that Owner may be able to verify any objection raised by MetroPCS. Failure or refusal on the part of MetroPCS to provide the required technical specifications within a reasonable time as set forth at the time of Owner's request, shall render MetroPCS' objection void and Owner may proceed with third party leasing.

13. **Insurance** – MetroPCS shall maintain, at its sole expense during the Term of this Lease commercial general liability insurance insuring MetroPCS against liability for personal injury, death or damage to personal property arising out of the use of the site by MetroPCS. Such insurances shall be in the amount not less than \$1,000,000.00 (\$1 million) per occurrence for each personal injury, death and property damage. MetroPCS shall carry an excess umbrella liability policy in the amount not less than \$2,000,000.00 (\$2 million), which shall not exclude the payment of all costs incurred to remedy a contamination event to the public water system caused by MetroPCS or any of its contractors or suppliers per occurrence. MetroPCS shall carry all proper insurances, and in amounts as prescribed by law, on its employees and contractors including, but not limited to, unemployment and workers compensation insurance. MetroPCS shall provide the Owner with valid certificates of all required insurances and in the required amounts, prior to being allowed to enter the site. Insurance carrier's certificate shall show evidence that it has insured MetroPCS for all liabilities under this Lease and that it will not cancel nor change any policy of insurance issued to MetroPCS except for after thirty (30) days notice in writing has been supplied to the Owner. Owner(s) shall be added to the policy as additional insured. The fact that MetroPCS is required to furnish insurance in accordance with this paragraph or the fact that such insurance is furnished does not and shall not relieve MetroPCS from its obligations to Owner under the provisions of Paragraph 17 of this Lease for any deficiency, amount of which MetroPCS is responsible to the Owner. Owner shall insure the property and building of which the site is part thereof, as the case may be, against loss or damage under a policy or policies of fire and extended coverage. All of Owner's and MetroPCS policies of insurance shall include a standard waiver of subrogation clause or endorsement. Owner and MetroPCS each hereby waive all right of recovery against the other for losses covered by insurance.

All contractors employed by MetroPCS and all subcontractors or any persons authorized by MetroPCS to enter the site shall furnish to Owner, prior to Owner's permission to enter the site, certificates made out to Owner evidencing insurances in the same amounts as those required by MetroPCS and under the same terms and conditions above required for MetroPCS' insurance. Owner(s) shall be named insured on each of these policies. Alternatively, MetroPCS may cover each or any of their contractors or suppliers on MetroPCS' insurance policy, all limits to be the same as MetroPCS' own coverage. Certificates showing covered contractors or suppliers as additional insured shall be forwarded to the Owner(s) prior to such contractors or suppliers being allowed to enter the site.

14. **MetroPCS' Property** – All Antenna Facilities installed by MetroPCS at the site shall remain the property of MetroPCS and shall not be subject to any lien or encumbrance of Owner or any third party acting pursuant to an agreement with the Owner.
15. **Damage to Owner's Facilities** – MetroPCS shall exercise all necessary precautions to avoid damage to the water tower, including contamination caused to the water supply and subject to the waivers contained in this Lease, hereby assumes all responsibility for any and all loss or damage to such facilities caused by MetroPCS or any person or company authorized by MetroPCS to perform work of any kind on the site. MetroPCS shall report any damage caused by MetroPCS, or any person or company authorized by MetroPCS to work on the site, to the Owner immediately. MetroPCS shall reimburse Owner for all costs of repairs including the costs for any required engineering and the costs for inspection of the damage before repair and after repair by the engineer and a report by the engineer to the Owner certifying that all repairs have been made properly.
16. **Water Tower Maintenance** – The Owner shall maintain in good order and repair the water tower so that it will adequately support all of MetroPCS' Antenna Facilities. Owner shall not be responsible for making any structural changes to the water tower to facilitate the placement of MetroPCS' Antenna Facilities, nor for making any modifications to the water tower to facilitate any changes of or modifications to MetroPCS' Antenna Facilities.

When maintenance to the outside coating on the water tower is required, MetroPCS shall do one of the following two options: MetroPCS shall, at MetroPCS' sole expense, temporarily relocate their antennae on a separate tower to be temporarily erected by MetroPCS adjacent to the water tower, same to be removed immediately upon completion of water tower maintenance and site restored to original conditions, **OR**, MetroPCS shall pay to Owner, in one lump sum payment, at the time the maintenance is performed, the difference in cost between what the maintenance operations would cost the Owner with the antennae and without the antennae on the water tower. Contractor to perform the maintenance shall be of the Owner's choosing. Owner shall provide MetroPCS with copies of the quotation for maintenance both with MetroPCS' equipment located on the water tower and without MetroPCS' equipment located on the water tower.

Owner shall not make any guarantee to MetroPCS that service will remain completely uninterrupted. Should it become necessary, for the safety of the water, the water system or the water tank, to perform an operation which requires the disconnection of the Antenna Facilities, Owner shall make a disconnection of the Antenna Facilities. Owner will notify MetroPCS as soon as practicably possible of such disconnection and shall take reasonable care in the handling of the equipment to avoid damage to the extent reasonably possible. Owner shall not disrupt MetroPCS' service except in cases of extreme emergency, as defined by Owner at time of incident, including, but not necessarily limited to, threats to public health, imminent structural failure, threats to the water system in general or rescue operations. Owner shall give MetroPCS as much advanced notice of the intent to disrupt service as

reasonably possible prior to commencing the disruption. MetroPCS shall be allowed, if time allows under the circumstances, to make such disconnections or to witness the disconnection.

17. **Indemnity** – MetroPCS agrees to indemnify, defend, and save harmless the Owner, its agents and employees, from and against all loss or expense (including costs and attorney fees) by reason of liability imposed by law upon the Owner for damages because of bodily injury, including death at any time resulting there from, sustained by any person or persons or on account of damage to property, including loss of use thereof, arising out of or in the consequence of the use of the site, whether such injuries to person or damage to property is due to the negligence of MetroPCS, its contractors or any person or company authorized by MetroPCS to be on the site or the Owner. This indemnity shall extend to any liability of loss arising from contamination of the water system or the site or the environment as provided for in Paragraph 18 below. This indemnity shall not apply to intentional misconduct by the Owner.

Owner shall indemnify and hold harmless - MetroPCS from any and all costs (including, but not limited to reasonable attorney's fees and court costs) and claims of liability or loss which arise out of the use and/or occupancy of the site by MetroPCS due solely to acts of intentional misconduct by the Owner.

18. **Hazardous Substances** – Owner represents that it has no knowledge, nor should it have any knowledge, of any substance, chemical or waste (collectively, "Substance") on the site which is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. MetroPCS agrees not to introduce or use any Substance on the site in violation of any applicable law. Any chemicals of any kind, including solvents, cleaning solutions, paints and thinners or any chemical of any type not already present on the site, brought in by MetroPCS or its contractors or any person or company authorized by MetroPCS to be on the site shall be declared to the Owner in advance and the Material Safety Data Sheet (MSDS sheet) shall be furnished to the Owner prior to permission being given to MetroPCS by the Owner for use of the chemical on the site.

Owner reserves the right to introduce onto the site at any time any Substance as defined above, which in the opinion of the Owner is applicable to the treatment of potable water or as necessary to be used in the course of maintenance of the water tower or site. Such materials may be stored by Owner on the site. Owner shall furnish MetroPCS with MSDS sheets for any such Substance brought onto the site which MetroPCS personnel, its contractors or any person or company authorized by MetroPCS to be on the site may come into contact with during reasonable course of required activity on the site.

19. **Assignment** – This Lease may be freely assigned by MetroPCS provided that no assignment shall relieve MetroPCS of any of its obligations under this Lease, and provided further, that no assignee may use the water tower for other than a PCS communications system without the express written consent of the Owner. Upon

such consent, any assignee assumes all applicable rights and obligations of this Lease. Any assignee to which this Lease may be assigned without Owners consent shall be bound by all terms and conditions of this Lease, especially those terms regarding insurance, liability and safety in the use of the site.

20. **Condemnation** – If all or substantially all of Owner's property upon which the site is located is condemned by an authorized governmental or quasi-governmental authority, this Lease shall terminate upon the date of taking and each party shall have the right to maintain their own respective actions against the condemning authority for their respective damages and neither party shall have any interest in any award granted to the other. If a taking occurs, the rent shall be prorated to the date of the taking, and any excess prepaid rent shall be promptly repaid to MetroPCS.
21. **Termination** – MetroPCS shall have the right to terminate this Lease at any time if (i) MetroPCS cannot obtain all certificates, permits, licenses or other approvals (collectively, "Approvals") required from any governmental authority and/or easements required from any third party to operate its communications facility; (ii) such Approvals are canceled, expire, lapse, withdrawn or terminated; (iii) Owner fails to hold legal title to the property on which the site is located; (iv) Owner does not have the legal right to enter into this Lease; or (v) for any other reason, MetroPCS, in its sole discretion, determines that it will be unable to use the site for the use intended by this Lease. However, should MetroPCS elect to terminate this Lease for any of the above reasons, MetroPCS shall still be liable to Owner for any costs, charges or other fees which the Owner contracted for or has already paid out as required by any section of this Lease prior to the date Owner receives notification from MetroPCS of intent to terminate.

Owner may terminate this Lease if MetroPCS ceases operations at the site continuously for more than one (1) year. Owner may also terminate this Lease if MetroPCS reneges on any payments due the Owner, becomes 90 days in arrears on rent payments or other payments due Owner, threatens the water supply by its actions or those of its contractors, threatens the structural integrity of the water tower or installs or operates the Antenna Facility which in any way impedes the operation of the water tower or threatens the safety of water system personnel.

Upon termination of this Lease, MetroPCS shall remove all equipment including, but not limited to, antennae, cables, supports and electrical equipment. This shall be accomplished within a period of 60 calendar days upon termination. MetroPCS shall be liable, upon removal of equipment, for the cost of Owner to have engineer certify that removal of the equipment has not damaged the water tower or other or the Owner's facilities located on the site.

22. **Notices** – All notices shall be in writing and shall be sent by U.S. certified mail, return receipt requested, or by overnight express delivery to the address of the party set forth above or as otherwise directed in writing by such party of as provided under applicable state law. Notice is deemed as of the date of delivery as shown on the

return receipt of on the date of delivery of an express delivery as evidenced by the signature of the receiving party.

If to Lessee:

MetroPCS Texas, LLC
2250 Lakeside Blvd.
Richardson, TX 75082
Attn: Property Manager
Cell Site: MUS2830C Site Name: Fruitport WT

With a copy to:

MetroPCS Michigan, Inc
28505 Schoolcraft Rd Bldg 6
Livonia, MI 48150

AND

If to Owners:

Muskegon County Department of Public Works
131 E. Apple Avenue, 4th Floor
Muskegon, MI 49442

23. **Compliance with Laws** – Owner represents that Owner's property (including, without limitation, the site) and all improvements thereto, are in compliance with all building life/safety, disability and other laws, codes and regulations of any governmental or quasi-governmental authority. MetroPCS agrees that, subject to Owner's compliance with the terms of this paragraph, any improvements constructed by MetroPCS on the site and all operations of MetroPCS within the site shall be in compliance with all applicable laws, codes and regulations.

24. **Miscellaneous** –

- A. Owner represents and warrants that Owner has full authority to enter into and sign this Lease.
- B. The terms and conditions of the Lease shall extend to and bind the heirs, personal representatives, successors and assigns of Owner and MetroPCS.
- C. The prevailing party in any action or proceeding in court to enforce the terms of this Lease shall be entitled to receive its reasonable attorney fees and other reasonable enforcement costs and expenses from the non-prevailing party.
- D. This Lease shall be construed pursuant to the laws of the State of Michigan.
- E. This site Lease may not be amended or modified unless the Owner and MetroPCS consent in writing to the amendment or modification.

- F. This Lease contains all agreements, promises and understandings between Owner and MetroPCS. All exhibits are incorporated by reference.
- G. No signs may be installed on the site by MetroPCS with the exception of warning labels required on certain electrical equipment or other warning labels required by OSHA or MIOSHA regulations.

IN WITNESS WHEREOF, this Fruitport Township/City of Norton Shores water tank usage lease has been duly executed as of the dates set forth in the notarial acknowledgements below, to be effective for all purposes as of the date first above written.

WITNESS:

Sharon & Patricia
Patricia M. Nichols

Sharon & Patricia
Patricia M. Nichols

M.O. Stebitz
Susan McShannock
M.O. Stebitz
Susan McShannock

Karen Fisher
John Warner

Kim Harde

TOWNSHIP OF FRUITPORT

By: [Signature]

Date: 6/9/09

By: Carol Huebka

Date: 6-9-09

CITY OF NORTON SHORES

By: Henry Waldo

Date: 6/2/09

By: Oprie Fuller

Date: 6/2/09

COUNTY OF MUSKEGON

By: Marne Egle

Date: 11 JUNE 2009

By: _____

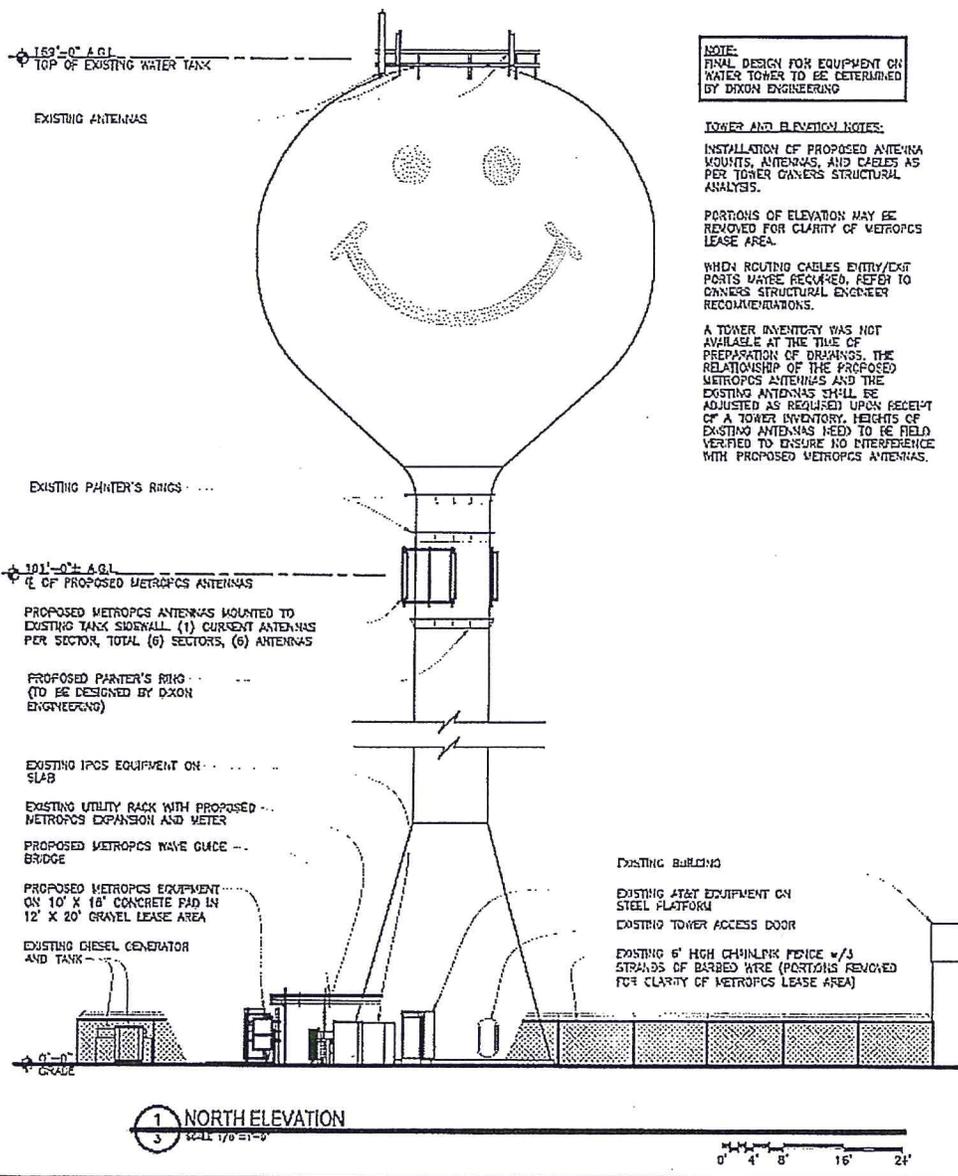
Date: _____

METROPCS MICHIGAN, INC.

By: [Signature]

Date: 5-14-09

Glen W. Flowers
VP & General Manager



NOTE:
 FINAL DESIGN FOR EQUIPMENT ON WATER TOWER TO BE DETERMINED BY DIXON ENGINEERING

TOWER AND ELEVATION NOTES:
 INSTALLATION OF PROPOSED ANTENNA MOUNTS, ANTENNAS, AND CABLES AS PER TOWER OWNERS STRUCTURAL ANALYSIS.

PORTIONS OF ELEVATION MAY BE REMOVED FOR CLARITY OF METROPCS LEASE AREA.

WHEN ROUTING CABLES ENTRY/EXIT PORTS MAY BE REQUIRED. REFER TO OWNERS STRUCTURAL ENGINEER RECOMMENDATIONS.

A TOWER INVENTORY WAS NOT AVAILABLE AT THE TIME OF PREPARATION OF DRAWINGS. THE RELATIONSHIP OF THE PROPOSED METROPCS ANTENNAS AND THE EXISTING ANTENNAS SHALL BE ADJUSTED AS REQUIRED UPON RECEIPT OF A TOWER INVENTORY. HEIGHTS OF EXISTING ANTENNAS NEED TO BE FIELD VERIFIED TO ENSURE NO INTERFERENCE WITH PROPOSED METROPCS ANTENNAS.

159'-0" A.G.L.
 TOP OF EXISTING WATER TANK

EXISTING ANTENNAS

EXISTING PAINTER'S RINGS

101'-0" A.G.L.
 1/2 OF PROPOSED METROPCS ANTENNAS

PROPOSED METROPCS ANTENNAS MOUNTED TO EXISTING TANK SIDEWALL. (1) CURRENT ANTENNAS PER SECTOR, TOTAL (6) SECTORS, (6) ANTENNAS

PROPOSED PAINTER'S RING (TO BE DESIGNED BY DIXON ENGINEERING)

EXISTING IPCS EQUIPMENT ON SLAB

EXISTING UTILITY RACK WITH PROPOSED METROPCS EXPANSION AND METER

PROPOSED METROPCS WAVE GUIDE BRIDGE

PROPOSED METROPCS EQUIPMENT ON 10' X 16' CONCRETE PAD IN 12' X 20' GRAVEL LEASE AREA

EXISTING DIESEL GENERATOR AND TANK

EXISTING BUILDING

EXISTING AT&T EQUIPMENT ON STEEL PLATFORM

EXISTING TOWER ACCESS DOOR

EXISTING 6' HIGH CHAINLINK FENCE w/3 STRANDS OF BARBED WIRE (PORTIONS REMOVED FOR CLARITY OF METROPCS LEASE AREA)

1 NORTH ELEVATION
 3 WALL TYPES



EXHIBIT D

The City's Authorizing Resolutions

EXHIBIT D
CITY OF NORTON SHORES

RESOLUTION

WHEREAS, the West Michigan Regional Water Authority (the “Authority”) was formed by the City of Norton Shores (the “City”) and Fruitport Charter Township (the “Township”) in January 2014 for the purpose of financing, issuing bonds for, improving, constructing, contracting for, and operating public water improvements and services;

WHEREAS, as part of their statutorily prescribed powers, the City and the Township participated in bond financing with the County of Muskegon (the “County”) to cover the costs of various project components and construction related to the joint water supply system operated by the City and the Township, which bonds are set to be repaid in full as of May 1, 2020;

WHEREAS, following the retirement of the bond financing referenced above, the City, the Township, and the County have agreed to transfer, convey, and assign all of their rights, title, interests, and obligations in, to, and under the related water supply infrastructure and certain lease agreements for cellular telephone antennas attached to such water supply infrastructure to the Authority, and the Authority has agreed to accept such assignment and assume all of the rights and obligations;

WHEREAS, the City, the Township, the County, and the Authority have memorialized the terms and conditions of the assignment to and assumption by the Authority of the rights and obligations referenced above in the proposed Assignment and Assumption Agreement to which this Resolution is attached as *Exhibit D* (the “Agreement”); and

WHEREAS, the Council of the City is being asked to authorize and approve the execution of the Agreement.

NOW, THEREFORE, IT IS RESOLVED AS FOLLOWS:

1. The Council of the City adopts and approves the Agreement to which this Resolution is attached as *Exhibit D* in all respects.
2. Mayor Nelund is authorized to sign the Agreement on behalf of the City and take any and all other necessary action to put the Agreement into full force and effect.
3. All resolutions in conflict in whole or in part are revoked to the extent of such conflict.

Draft Date
01/02/20

YES: _____

NO: _____

RESOLUTION DECLARED ADOPTED.

Dated: _____

/s/ _____

By: _____

Its: _____

EXHIBIT E

The Township's Authorizing Resolutions

EXHIBIT F

The County's Authorizing Resolutions

EXHIBIT G

The Authority's Authorizing Resolutions

EXHIBIT H

List of Material Liabilities

There are no such material liabilities.